APPENDIX

CHAPTER LXI

AN ACT Relating to Damages.

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Be it enacted by the Legislative Assembly of the Territory of New Mexico:

SECTION 1. Whenever any person shall die from any injury resulting from or occasioned by the negligence, unskillfulness or criminal intent of any officer, agent, servant, or employee, whilst running, conducting or managing any locomotive, car, or train of cars, or of any driver, of any stage coach or other public conveyance, while in charge of the same as driver; and when any passenger shall die from any injury resulting from, or occasioned by any defect or insufficiency in any railroad, or any part thereof, or in any locomotive or car, or in any stage coach, or other public conveyance, the corporation, individual or indi-

viduals, in whose employ such officer, agent, servant, employee, engineer or driver, shall be at the time such injury was committed, or who owns any such railroad, locomotive, car, stage coach, or other public conveyance, at the time any injury is received, resulting from, or occasioned by any defect or insufficiency above declared, shall forfeit and pay for every person or passenger so dying, the sum of five thousand dollars, which may be sued and recovered; first, by the husband or wife of the deceased; or second, if there be no husband or wife, or if he or she fails to sue within six months after such death then by the minor child or children of the deceased; or third, if such deceased be a minor and unmarried, then by the father and mother, who may join in the suit, and each shall have an equal interest in the judgment; or if either of them be dead, then by the survivor. In suits instituted under this section, it shall be competent for the defendant for his defense to show that the defect or insufficiency named in this section, was not of a negligent defect or insufficiency.

Sec. 2. Whenever the death of a person shall be caused by a wrongful act, neglect or default of another, and the act or neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then, in every such case, the person who, or the corporation which would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured.

Sec. 3. All damages accruing under the last preceding section shall be sued for and recovered by the same parties and in the same manner as provided in Section 1 of this act, and in every such action the jury may give such dam-

ages, not exceeding five thousand dollars, as they may deem fair and just, with reference to the necessary injury resulting from such death, to the surviving parties, who may be entitled to sue, and also having regard to the mitigating or aggravating circumstances attending such wrongful act, neglect or default.

Sec. 4. The jury on the trial of any issue, or inquisition of damages, may, if they shall think fit, give damages in the nature of interest, over and above the value of the goods at the time of the conversion or seizure.

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Sec. 9. Every action instituted by virtue of the provisions of this act must be brought within one year after the cause of action shall have accrued, or after this act shall go into effect.

Sec. 10. All acts and parts of acts in conflict with this act are hereby repealed, and this act shall take effect and be in force from and after its passage.

Approved February 18, 1882.

CHAPTER XLIX

AN ACT to Amend Sections 2309 and 2310 of the Compiled Laws of New Mexico of 1884. H. B. 107; Approved February 21, 1891.

Section 1. Right of action for injury to person notwithstanding death may have resulted.

Sec. 2. Disposition of money arising from an action for damages.

Be it enacted by the Legislative Assembly of the Territory of New Mexico:

Section 1. Section 2309 of the Compiled Laws of New Mexico of 1884 be and the same is so amended as to read as follows, viz.:

"Section 2309. Whenever the death of a person shall be caused by the wrongful act, neglect or default of another, although such death shall have been caused under such circumstances as to amount in law to a felony, and the act or neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who or the corporation which would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured."

Sec. 2. Section 2310 of the Compiled Laws of New Mexico of 1884 be and the same is hereby amended so as to read as follows, viz.:

"Section 2310. Every such action as mentioned in the next preceding section shall be brought by and in the name or names of the personal representative or representatives of such deceased person, and the jury in every such action may give such damages, compensatory and exemplary, as they shall deem fair and just, taking into consideration the pecuniary injury or injuries resulting from such death to the surviving party or parties entitled to the judgment, or any interest therein, recovered in such action, and also having regard to the mitigating or aggravating circumstances attending such wrongful act, neglect or default. The proceeds of any judgment obtained in any such action shall not be liable for any debt of the deceased: *Provided*, He or she shall have left a husband, wife, child,

father, mother, brother, sister, or child or children of the deceased child, but shall be distributed as follows:

"*First.* If there be a surviving husband or wife, and no child, then to such husband or wife; if there be a surviving husband or wife and a child or children or grandchildren, then equally to each, the grandchild or grandchildren taking by right of representation; if there be no husband or wife, but a child or children, or grandchild or grandchildren, then to such child or children and grandchild or grandchildren by right of representation; if there be no child or grandchild, then to a surviving brother or sister, or brothers or sisters, if there be any; if there be none of the kindred hereinbefore named, then the proceeds of such judgment shall be disposed of in the manner authorized by law for the disposition of the personal property of deceased persons."

Sec. 3. All acts and parts of acts in conflict with this act are hereby repealed, and this act shall take effect and be in force from and after its passage.

CHAPTER NO. 19

(Laws of 1931)

An Act to Amend Section 36-101 of the 1929 New Mexico Statutes Annotated, by Increasing the Liability of Common Carriers for Death by Wrongful Act.

S. B. NO. 15; Approved March 10, 1931.

Be It Enacted by the Legislature of the State of New Mexico:

Section 1. Section 36-101, The 1929 New Mexico Statutes Annotated, is hereby amended to read as follows:

"Whenever any person shall die from any injury resulting from, or occasioned by the negligence, unskillfulness or criminal intent of any officer, agent, servant or employee, whilst running, conducting or managing any locomotive car, or train of cars, or of any driver of any stage coach or other public conveyance, while in charge of the same as driver; and when any passenger shall die from injury resulting from, or occasioned by any defect or insufficiency in any railroad, or any part thereof, or in any locomotive or car, or in any stage coach, or other public conveyance, the corporation, individual or individuals, in whose employ any such officer, agent, servant, employee, engineer or driver, shall be at the time such injury was committed, or who owns any such railroad, locomotive, car, stage coach, or other public conveyance, at the time any injury is received, resulting from, or occasioned by any defect or insufficiency above declared, shall forfeit and pay for every person or passenger so dying the sum of *Seven Thousand Five Hundred Dollars*, which may be sued and recovered; first, by the husband or wife of the deceased; or second, if there be no husband or wife, or if he or she fails to sue within six months after such death, then by the minor child or children of the deceased; or third, if such deceased be a minor and unmarried, then by the father and mother; or fourth, if the deceased be over twenty-one years of age and unmarried, by a dependent father or mother or dependent brother or sister, who may join in the suit; and each shall have an equal interest in the judgment; or if either of them be dead, then by the survivor. In suits instituted under this section, it shall be competent for the defendant for his defense to show that the defect or insufficiency named in this section, was not of a negligent defect or insufficiency."